

THESIS

THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*
WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009
ABOUT OLD AGE PROSPERITY

By:
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A thesis submitted
in partial fulfillment of requirements for S-1 degree of Islamic Law



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2010

CERTIFICATE OF AUTHORSHIP

In the name of Allah,

With full consciousness and responsibility, I state that the thesis entitled:

THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*

WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009

ABOUT OLD AGE PROSPERITY

Is my original work except the quotations whose sources are already mentioned. Any shortcomings in this present work are my own responsibility.

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WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009

ABOUT OLD AGE PROSPERITY

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MOTTO

وَلَا تَتَّخِذُوا ءَايَاتِ اللَّهِ هُزُوًا ۚ وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُم مِّنَ الْكِتَابِ وَالْحِكْمَةِ
يُعِظُكُمْ بِهِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٣١﴾

Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things. (QS; 2:231)

DEDICATION

I dedicate my final work for those whom I owe them my life, those who assisted and encouraged me with continuous love, carefulness and sacrifice. Without those people I cannot be me, standing on podium, heard my name mentioned, and received graduation letter.

To my mother Alm. Hj. Siti Aisyah and father Alm. H. Muhammad Zahri thank you for raising me. I know that I cannot pay this debt ever. And it is the reason why you both are taking the first place in this dedication letter at least it is what I can do to express my gratitude and to show how important you are for me.

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The writer realized that this writing work is not perfect. Therefore any mistakes in this thesis compilation is fully become author's responsibility. Thank you.

Malang, June 2nd, 2010

Writer

TABLE OF CONTENTS

COVER	i
CERTIFICATE OF AUTHORSHIP	ii
APPROVAL SHEET	iii
LEGITIMATION SHEET	iv
MOTTO	v
DEDICATION	vi
ACKNOWLEDGMENT	vii
TABLE OF CONTENTS	ix
ABSTRACT	xi
CHAPTER I: INTRODUCTION	1
A. Background of Study	1
B. Research Questions	5
C. Purpose of Study	6
D. Significance of Study	6
E. Scope And Limitation	6
F. Definition of Keywords	7
G. Previous Research	7
H. Organization of Study	8

CHAPTER II: THEORITICAL FRAMEWORK	10
A. Legal Qualities between Islamic Law and Canon Law	10
B. <i>Al-Mashlahat Al-Mursalah</i>	14
C. Reception in Staatblad 1882 Num. 152	18
D. Formulation of Local Regulation	21
CHAPTER III: RESEARCH METHOD	35
A. Type of Research	35
B. Approach of Research	36
C. The Sources of Law	38
D. The Sources of Law Collecting Technique	41
E. Legal Reasoning Method	42
CHAPTER IV: ANALYSIS AND DISCUSSION	46
A. The Emergence Background of Local Regulation Num. 2 about Old Age Prosperity	46
B. Local Legislation Program (Prolegda) as Planning Instrument of Regulation Making Program	48
C. Applying The Theory of <i>Al-Mashlahat Al-Mursalah</i> Within The Process Of Local Regulation Making	53
CHAPTER V: CLOSING	59
A. Conclusion	59
B. Suggestions	61
BIBLIOGRAPHY	62
ATTACHMENT	63

ABSTRACT

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Keywords: Reception, *Mashlahah*, *Al-Mashlahat Al-Mursalah*, Local Regulation.

Islamic law formalization at its developing period in Indonesia was preceded by the publication of Staatblad 1882 Num. 152 in the era of Governor Van Den Berg or quite popular with the theory of *receptio in complexu* term. Such fact has brought this nation over consciousness that religion and state are things cannot be separated apart in term of legal reformation. The emergence of Code Num. 1 Year 1974 followed with KHI, Code Num. 7 Year 1989 about Religious Court, and recently published KHES Year 2009 were consequence of this nation's legal requirement since the independent day of Indonesia. Therefore, according to European continental's civil law system concept, the law will prevail and self-stood if was codified through legislative institution.

In the Islamic law study, *al-mashlahat al-mursalah* is one of new law making's principles which cannot be found its detail explanation in either Koran or Hadith. Or also can be said that the new law making here possesses a shared vision and mission with the Koran and Hadith. By assuming on such, the new law making referred to civil law concept which is passing through legislation process in Indonesia is at certain point possessing the same purpose or *maqashid*, that is, the legal enactment in particular, would indeed be bringing the *mashlahah* and shutting *mudhorot*. Therefore, this thesis uses a local legal product namely the Local Regulation of Probolinggo City Num. 2 Year 2009 about Old Age Prosperity as primary source of law to be questioned about, of how is the prosperity concept within *al-mashlahat al-mursalah* received into legislative drafting phases of Local Regulation about Old Age Prosperity? And How is the prosperity values of Islamic law translated into a valid linguistic statutory of Local Regulation about Old Age Prosperity?

The integrated comprehension toward legal product such as Local Regulation requires any of approaches which relevancy between regulation and other regulation can be read thoroughly and intact. By making use of statute approach the legal comprehension will focus upon hierarchy of regulation where gradually containing rules to be regulated further starting from central going down to local level. This legal comprehension cannot complete if it is not co-relational with legal drafting phases or Local Legislation Program according to Code Num. 10 year 2004 term. By making use of deductive legal reasoning method, therefore, this research tries to find the reception pattern of *al-mashlahat al-mursalah* within Local Regulation of Probolinggo City Num. 2 Year 2009 about Old Age Prosperity.

This research's result shows that *al-mashlahat al-mursalah*, defined as harmonious legal vision and mission within new law making with the Koran's vision and mission, has placed the *mashlahah* concept through boundaries or particles ought to exist. Then, by following such direction the process of *mashlahat mursalah* has indirectly happened yet also indicated to the reception of Islamic law.